

SAN JOAQUIN DELTA COLLEGE

Audit Report

MEASURE L AND PROPOSITION 1D BOND PROCEEDS

March 1, 2004, through August 31, 2008



JOHN CHIANG
California State Controller

November 2008



JOHN CHIANG
California State Controller

November 18, 2008

Raul Rodriguez, President
San Joaquin Delta College
5151 Pacific Avenue
Stockton, CA 95207

Dear Dr. Rodriguez:

Enclosed is the State Controller's Office (SCO) report of its audit of the San Joaquin Delta College's (Delta College) use of Measure L and Proposition 1D bond proceeds. Delta College's response to our audit findings and recommendations is incorporated as Attachment A to this report. Our comments on some statements made in your response are included as Attachment B to this report. The audit period was March 1, 2004, through August 31, 2008.

Based on your response, you disagree with most of the audit findings and recommendations. We cannot compel you to take action; however, please be advised that, under the "School Bond Waste Prevention Action" section of the Strict Accountability in Local School Construction Bond Act of 2000, any citizen who has paid an ad valorem tax on real property within the community college district can pursue legal action against any officer of the district for failure to use bond proceeds in accordance with legal requirements or who willfully failed to appoint the citizens' oversight committee.

We are forwarding our report to the Commission on California State Government Organization and Economy (Little Hoover Commission) for review and consideration. The Little Hoover Commission is currently conducting a review of the adequacy of state oversight and control over bond expenditures.

Please convey our appreciation to your staff for their cooperation during the course of our audit. If you have any questions, please contact Andrew Finlayson, Chief, State Agency Audit Bureau, at (916) 324-6310.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/wm

cc: Jon C. Stephens, MBA, Ed.D.
 Vice President, Business Services
 San Joaquin Delta College
Delta College Board of Trustees
Honorable Michael Machado, State Senator
Dr. Diane Woodruff, Interim Chancellor
 Community College Chancellor's Office
Stuart Drown, Executive Director
 Little Hoover Commission

Contents

Audit Report

Summary	1
Introduction	2
Background	3
Audit Scope and Objectives	5
Audit Methodology	6
Conclusion	7
Views of Responsible Official	8
Restricted Use	8
Findings and Recommendations	9
Attachment A—San Joaquin Delta College’s Response to Draft Audit Report	
Attachment B—SCO Auditors’ Comments on San Joaquin Delta College’s Response	

Audit Report

Summary

The State Controller's Office (SCO) conducted an audit of the San Joaquin Delta College's (Delta College) use of Measure L and Proposition 1D bond proceeds. Measure L was approved by voters in the Delta College District, which provided \$250 million in bond funds to repair, improve, expand, and upgrade facilities. Delta College received \$40.2 million of state matching funds from Proposition 1D for two projects under Measure L. As of June 30, 2008, total expenditures for Measure L and Proposition 1D were \$72 million and \$1.4 million, respectively.

Measure L was approved under provisions of Proposition 39, which amended the California Constitution to enable school bond measures to pass with a 55% vote majority instead of a two-thirds margin, provided that:

- Bond funds can be used only for facilities and not for other purposes such as teacher and administrator salaries or other school operating expenses.
- Before holding an election, a school district or a community college must publicize a list of its intended projects. Measure L contains a list of the intended projects.
- The school district or community college must arrange for two independent audits (one performance audit and one financial audit) annually. The performance audit is intended to ensure that funds are spent only on the specific projects listed.
- The school district or community college must appoint a citizens' oversight committee (COC) to actively review and report on the proper expenditure of taxpayers' money and alert the public to any waste or improper expenditures.

Of the approximately \$72 million in Measure L expenditures incurred through June 30, 2008, we found that Delta College spent \$11.5 million (16%) on projects that are not consistent with the priorities identified in the voter-approved measure. Approximately \$10.6 million was spent to build state-of-the-art athletic facilities at the college. Another \$887,000 was used to install two high-tech electronic message signs (marquee signs) at two of the college's entrances. According to its budget documents, Delta College anticipates spending \$4.25 million more in fiscal year (FY) 2008-09 to complete construction of the athletic facilities. We could find no rationale or basis for assigning high priority to these projects, given the fact that the bond proceeds were clearly insufficient to fund even the projects listed in Measure L and approved by the voters.

Delta College also used Measure L funds to pay \$283,382 in costs incurred during FY 2004-05, FY 2005-06, and FY 2006-07 for a new financial information system called Kualii, a project sponsored by a consortium of colleges. Costs incurred include consortium fees, consultant fees, and costs of staff travel to 18 other college campuses/sites throughout the country, including campuses in New York, Las Vegas, and Hawaii. As the financial information system is an administrative function, the costs are operating expenses and thus are specifically prohibited under Proposition 39 and Measure L. Although Delta College removed the expenditure from Measure L funds in July 2008, we are still concerned about the lack of control and oversight over bond expenditures.

We found the oversight effort of the COC to be ineffective because the scope of its review is limited in the bylaws adopted by the Board of Trustees. The reviews performed during the COC's quarterly meetings were passive and perfunctory; committee members, citing their unpaid and voluntary status, stated that they could not devote significant time and effort to the oversight endeavor. According to the Education Code, each COC member can serve only two consecutive two-year terms. Under this criterion, the term of all four current COC members would expire by the end of October 2008. The Board of Trustees amended the COC bylaws to extend the term of the current COC members by another two-year term. However, we question whether the Board of Trustees has the legal authority to override the Education Code.

Finally, we found that the annual audit requirement for a performance audit and a financial audit did not result in meaningful enhancement of accountability and transparency of Measure L funds. Instead of arranging for performance audits as specified in Proposition 39 and Measure L, Delta College retained the auditors to perform "agreed-upon procedure" reviews, which are less comprehensive. In performing the procedures, the auditors retained by Delta College apparently were liberal in their interpretation as to what constitutes appropriate expenditures under Measure L. Although Proposition 39 requires an independent financial audit of bond proceeds until all proceeds have been expended, the contract between Delta College and its auditors since the passage of Measure L did not call for any additional audit procedures beyond what the auditors already were required to perform to meet audit requirements under state and federal laws. The Statements of Revenues, Expenditures, and Changes in Fund Balance, which provide detailed data concerning bond revenues and expenditures in the Capitol Project Fund, were presented in Delta College's audited financial statements as supplemental information and marked "unaudited". Yet, in the COC's annual reports, these statements were presented as "audited financial reports."

Introduction

This report presents the results of the State Controller's Office (SCO) a of Proposition 1D, Measure L, and other funding in relation to the college's Facility Master Plan. Prompted by a citizen's complaint, the San Joaquin County Civil Grand Jury (Grand Jury) conducted an investigation and issued a report on June 18, 2008, on Delta College's use of Measure L bond funds and the role of the Delta College Board of Trustees as well as the Citizens' Oversight Committee (COC) that was created to meet bond oversight requirements. After reviewing the Grand Jury report, the SCO decided to conduct an audit to ensure that bond funds were properly spent. In addition, the Office of State Senator Michael Machado requested an audit of the oversight of Delta College's use of Measure L bond proceeds.

The SCO audit was conducted pursuant to the State Controller's audit authority under Government Code section 12410.

Background

San Joaquin Delta College is a comprehensive community college founded in 1935. It serves a territory of 2,400 square miles, spanning much of San Joaquin County and portions of Alameda, Calaveras, Sacramento, Solano, and Amador counties. The main campus is located on 165 acres at 5151 Pacific Avenue in Stockton, California.

Proposition 1D

The Kindergarten-University Public Education Facilities Bond Act of 2006 allows the State to sell \$10.4 billion in general obligation bonds—\$7.3 billion for K-12 school facilities and \$3.087 billion for higher education facilities.

The Proposition 1D bond issue will provide needed funding to relieve public school overcrowding and repair older schools. It will improve earthquake safety and fund vocational educational facilities in public schools. Funds will also be used to repair and upgrade existing public college and university buildings and build new classrooms to accommodate the growing student enrollment in the California Community Colleges, the University of California, and the California State University.

Proposition 1D funds in the amount of \$3.087 billion were allocated for higher education facilities to construct new buildings and related infrastructure, reconfigure existing facilities, and purchase equipment. The allocation for higher education is as follows:

- Community colleges facilities: \$1.507 billion
- University of California (UC) system: \$890 million
- California State University (CSU): \$690 million

Delta College received \$40,153,963 of state matching funds from Proposition 1D for its two projects under Measure L. The Goleman Library expansion was partly funded with state matching funds, for \$10,555,000, and the Cunningham Math and Science building for \$29,598,963. As of June 30, 2008, the total amount of Proposition 1D funds expended for the Measure L projects was \$1,431,248.

Measure L

On March 2, 2004, voters in the Delta College district approved Measure L, which provided \$250 million in bond funds to Delta College to “prepare students for jobs/transfer to four-year colleges, repair buildings, improve safety, and accommodate growing enrollment” by:

- Repairing leaking roofs, decaying walls, and aging electrical wiring;
- Improving fire safety;
- Removing asbestos;
- Expanding/establishing Stockton, Manteca, Tracy, Lodi/Galt, Foothill Area campuses/education centers; and
- Upgrading, acquiring, constructing, and equipping buildings, sites, and classrooms.

In their decision to seek voter approval for bond funds to address the college’s facility needs, Delta College’s Board of Trustees chose to undertake Measure L under the provisions of Proposition 39. California’s Constitution requires a two-thirds vote to approve local bonded indebtedness. Proposition 39 amended Articles XIII A and XVI (Section 18) to give community colleges and K-12 school districts the option of having bond measures passed with a 55% vote providing that:

- Bond funds can be used only for facilities. The bond proceeds can be used for the construction, rehabilitation, or replacement of school facilities. The money can also be used to acquire school sites and to furnish and equip schools. The bond proceeds cannot be spent for any other purpose, such as teacher and administrator salaries or other school operating expenses.
- Before holding an election, a school district or a community college must publicize a list of its intended projects, along with certification that it had evaluated “safety, class size reduction, and information technology needs” before preparing the list.
- A school district or a community college must arrange for two independent audits each year until the bond proceeds are spent. One audit, a performance audit, is intended to ensure that the funds are spent only on the specific projects listed. The other is a financial audit of bond proceeds until all of the proceeds are used.

The passage of Proposition 39 triggered accompanying legislation, Assembly Bill (AB) 1908 (codified into Education Code sections 15264-15425), that limits the amount of the bond proposal and the subsequent increase in property taxes. AB 1908 also stipulates that, if the bond election succeeds at the 55% level, the school district or community college district must appoint a Citizens’ Oversight Committee (COC) to “actively” review and report on the proper expenditure of taxpayers’ money for school construction and “alert the public to any waste or improper expenditures.”

In order to achieve its goals, the COC must:

- Ensure that bond funds are properly spent as proposed on the ballot, and that no funds are spent on school district salaries or operating expenses.
- Issue reports, at least annually, on the results of its activities and make the reports available on the Internet.
- In addition, under Education Code section 15278(c), the COC may engage in any of the following activities:
 - Receiving and reviewing copies of the annual independent performance audit report.
 - Receiving and reviewing copies of the annual independent financial audit report.
 - Inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with applicable requirements.
 - Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures.

Pursuant to the requirements of Proposition 39 and the Education Code, Measure L contains a list of intended projects as outlined in the San Joaquin Delta College Facilities Master Plan (Master Plan), which was incorporated into Measure L. Measure L further stated that the Board of Trustees “evaluated the Delta College’s urgent and critical facility needs, including safety issues, aging facilities, enrollment growth, class size and availability, energy reduction and information and computer technology” in developing the scope of project to be funded in the Master Plan.

Measure L also specifies that “the expenditure of bond money on these projects is subject to stringent financial accountability requirements. By law, performance and financial audits will be performed annually, and all bond expenditures will be monitored by an independent citizens’ oversight committee to ensure that funds are spent as promised and specified.”

Audit Scope and Objectives

Our audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and recommendations based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included all of Delta College’s bond expenditures incurred since the passage of Measure L through June 30, 2008.

Our audit was conducted to determine whether:

- Costs incurred under Proposition 1D, the Measure L Bond Program, and other funding are eligible and reasonable;
- The Delta College complied with general provisions of the issuance and sale of bonds;
- The Delta College adequately managed and monitored the bond programs and bond project managers;
- Bond proceeds and interest were accounted for properly;
- Bond proceeds were expended in accordance with the provisions of the bond measures as approved by the voters; and
- Funding will be available if the college encounters any shortfall with the project.

Additional objectives of the audit include determining:

- The number of projects authorized by Proposition 1D, Measure L, and other funding that were completed, in progress, and outstanding;
- Bond proceeds available in relation to the number of projects outstanding;
- The cause of any shortfall and why project costs exceeded the budgeted amount;
- If any projects were cancelled or delayed as a result of over-spending;
- Who had spending authority over the bond proceeds and projects;
- How the college managed and prioritized projects; and
- The responsibility of the Citizens' Oversight Committee (COC) and its involvement in monitoring the bond projects.

Audit Methodology

In order to accomplish our audit objectives, we performed the following procedures:

- Reviewed Proposition 1D, Measure L, and other pertinent documents related to these bond measures.
- Reviewed Proposition 39 and other pertinent state statutes related to the issuance of bonds and use of bond proceeds.
- Reviewed the report issued by the San Joaquin County Civil Grand Jury and the Delta College Board of Trustees' response to the report.

- Reviewed the audit reports prepared by Delta College’s independent auditors pursuant to the annual financial and performance audit requirements.
- Reviewed the audit working papers of the independent auditors.
- Reviewed the minutes of the Delta College Board of Trustees’ meetings.
- Reviewed the minutes of the Citizens Oversight Committee’s (COC) meeting.
- Reviewed the minutes of the Facilities Planning Committee meetings. The Facilities Planning Committee reviews and considers funding requests for all facilities-related projects in the college, including those to be funded through the use of bond proceeds. The committee is comprised of Delta College administrators, faculty, and students.
- Interviewed various officials and staff at Delta College to gain an understanding of relevant policies, procedures, and processes.
- Reviewed written manuals and documents related to policies, procedures, and processes to account for bond expenditures.
- Interviewed two of the four current members of the COC to gain an understanding of the committee’s oversight role and activities. We attempted to interview all four COC members, but two of the four members did not respond to our repeated attempts to arrange interviews.
- Examined various financial records including, but not limited to, general ledgers, journals, chart of accounts, payable journals, and project cost records.
- Reviewed and examined contracts, purchase orders, invoices, and other related documents.
- Performed test of transactions as deemed necessary to verify the accuracy and reliability of accounting records and reports.

Conclusion

Our audit disclosed that:

- A significant portion of the expenditures incurred by Delta College were spent on state-of-the-art athletic facilities and computer signs.
- Delta College inappropriately used Measure L bond proceeds to pay for operating expenses, which is specifically prohibited in Measure L as well as in Proposition 39. Although these expenditures have been removed, we are still concerned about the lack of control and oversight over bond expenditures.

- Oversight by the Citizens' Oversight Committee (COC) was passive, perfunctory, and ineffective.
- The Board of Trustees apparently exceeded its authority by amending the COC bylaws to extend the term of the COC members beyond the term prescribed in the Education Code.
- The annual audit requirements for a performance audit and a financial audit did not result in meaningful enhancement of accountability and transparency of Measure L funds.

Views of Responsible Officials

We conducted an exit conference on October 30, 2008, and discussed our audit results with Dr. Jon C. Stephens, Vice President, Business Services, Delta College. At the exit conference, we stated that the final report will include the views of responsible officials.

Restricted Use

This report is intended for the information and use of the San Joaquin Delta College, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

November 18, 2008

Findings and Recommendations

FINDING 1—
A significant portion of the expenditures incurred by Delta College were spent on state-of-the-art athletic facilities and computer signs.

Pursuant to Proposition 39 requirements, Measure L contained a list of intended projects that were to be funded through bond proceeds. Measure L also incorporated the San Joaquin Delta College Facilities Master Plan and stated that the college will amend the Master Plan from time to time. According to Measure L, the Board of Trustees conducted independent facilities evaluations and received public input and review in developing the scope of college facility projects to be funded, and that Delta College faculty, staff, and students prioritized the repair, job training, health, and safety needs so that the most critical needs would be addressed. Presumably, the projects that were specifically listed in Measure L were deemed the most critical project and thus received the highest priority.

As of June 30, 2008, Delta College incurred \$72 million in expenditures under Measure L. Our audit found the following expenditures, totaling \$10.6 million (14.7%), were incurred for projects for the Physical Education and Athletics Department:

Project Activity 8100 (Batting Cages)	\$ 100,635
Project Activity 8103 (Baseball Stadium)	3,272,558
Project Activity 8105 (Scoreboard System)	225,745
Project Activity 8107 (Softball Parking)	1,952,357
Project Activity 8108 (Soccer Track)	2,001,942
Project Activity 8109 (Football Track)	2,937,517
Project Activity 8102 (Arch/Engineering & Project	<u>124,411</u>
Total	<u>\$ 10,615,165</u>

In addition, Delta College spent another \$887,000 for two electronic message signs (marquee signs) at two of the college's entrances; these signs were not specifically listed in Measure L. The two signs were originally budgeted for \$100,000 in May 2005. The budget was increased to \$800,000 by August 2006 because Delta College staff determined that it was not feasible to retain the frame of the old signs.

According to its budget documents, Delta College anticipates spending another \$4.25 million in fiscal year (FY) 2008-09 to complete construction of the athletic facilities.

We reviewed Measure L and found only vague reference to increased classroom capacity for academic and job training classes, including physical and health education facilities that may be construed as enhancement of athletic facilities. Measure L did not contain any reference to electronic message signs. We also reviewed Delta College's Facilities Master Plan (Master Plan), dated November 18, 2003, to determine whether the above projects were included in the Master Plan. The only item we could find was Project No. S.16, for "Improve Safety and Accessibility at West Entrance, and Athletic Fields." That project, budgeted for \$1,944,000, entails:

- Modifying north segment of access roads and improving lighting
- Constructing new athletic field
- Installing artificial turf, resurfacing track, installing field lights
- Constructing new entrance features

Delta College already spent more than \$10 million with another \$4.25 million in anticipated expenditures on athletic fields alone; the scope of work performed at the athletic fields clearly exceeded the scope of work envisioned under Project No. S.16. Apparently, Delta College decided to use Measure L funds to build state-of-the-art athletic facilities. For example, according to the bid package for the football track and softball field parking projects, the bidder must meet stringent experience requirements because:

The track construction, especially with a Mondo surface, requires very precision work to not only meet Mondo requirements but NCAA & IAAF standards. Especially since Section 02541 I.02 requires the track to meet these standards. The track is the key component and requires even tighter tolerances than synthetic field. If the track is not constructed properly, NCAA will not certify any potential records that could be set on that track. Also without a contractor familiar with IAAF requirements the District may not have a potential opportunity to host Olympic trials, which are currently held at Sacramento State. A contractor that has built two synthetic fields may not have constructed a track, let alone a track with Mondo surface.

According to the minutes of the Board of Trustees' meeting on July 15, 2008, the newest field surface, after a free upgrade by the manufacturer, is the same as the field surface used at the Olympic Games in Beijing.

Similarly, according to news articles published by Delta College's staff, the new baseball field at the college is also a state-of-the-art facility, as it is one of the first fields in Northern California with the "Brock System." The system encompasses a high-tech watering system capable of cooling field temperature by 40 degrees in 15 minutes.

In its response to the Grand Jury report, the Delta College Board of Trustees noted that Measure L contains a list of potential projects, prepared based on the college's needs, with an estimated cost of between \$350 million to \$400 million. Citing unprecedented inflationary effects, the Board of Trustees further noted that "the original list of Measure L projects would cost upwards of \$700 million dollars after taking such inflationary effects into consideration." Despite the fact that the \$250 million made available under Measure L clearly was insufficient to address the college's most urgent needs as identified in the measure, Delta College nevertheless proceeded to use bond funds to install state-of-the-art athletic fields and high-tech computerized message signs. These projects were approved under a "quick start" program, meaning they were needed to address critical health and safety concerns and comply with ADA standards. In reviewing the minutes of the Board of Trustees' meetings and the Facilities Planning Committee's meetings, we found no deliberation, rationale, or basis for placing these projects under the "quick start" program. For example, the Board of Trustees, on February 5, 2008, approved as an item on the consent agenda a contract for the aforementioned football track and softball field parking project.

Based on the Proposition 39 requirement of an annual performance audit "to ensure that funds have been expended only on the specific project listed" and the Measure L requirement of a Citizens' Oversight

Committee “to ensure that funds are spent as promised and specified,” there is a clear expectation that bond funds be used consistent with the project priority approved by the voters. In its response to the Grand Jury report, the Board of Trustees noted that Measure L was approved by a slim margin. Delta College officials should have been more diligent in allocating funds to projects that were consistent with the priority of the voters instead of expansion or construction of state-of-the-art athletic facilities and high-tech computerized message signs.

**FINDING 2—
Delta College
inappropriately used
Measure L bond
proceeds to pay for
operating expenses,
which is specifically
prohibited in Measure L
as well as in
Proposition 39.**

From fiscal year (FY) 2004-05 through FY 2006-07, Delta College used Measure L funds to pay a total of \$283,382 in expenses associated with the implementation of a new financial information system (Kuali). The Kuali is currently under development by a consortium of colleges. According to Delta College’s records, the \$283,382 in expenses incurred to date for the project was for the following purposes:

Consortium Fees	\$ 179,500
Consulting Fees	35,164
Staff Travel (to 18 other college campuses/sites such as in New York, Las Vegas, Hawaii, Texas, Indiana, and Missouri)	<u>68,718</u>
Total	<u>\$ 283,382</u>

As Kuali is a system that will address the administrative needs of Delta College, the associated costs of the system are operating expenses and thus are specifically prohibited in both Measure L and Proposition 39. However, over the three-year period, Delta College used Measure L funds to pay for such costs by inappropriately classifying them as “Group II” Equipment,” or Movable Equipment expenses. According to the minutes of the Citizens’ Oversight Committee meeting on August 30, 2007, Delta College administrators decided to assume the balance of funding for the project.

Nearly one year later, in July 2008, Delta College’s accounting staff made a journal entry removing the \$283,382 in project expenditures from the Measure L account to a general account in its Capital Project Fund. However, according to the minutes of a meeting on August 12, 2008, the Board of Trustees unanimously voted to use the Measure L funds and the college’s General Fund to pay \$930,960 in costs for the Kuali Project. According to Delta College’s Vice President of Business Services, who presented this issue during the Board of Trustees’ meeting, there was a typographical error in the board agenda item about using Measure L funds for the Kuali Project. He said that he told the board that, contrary to the board agenda item, no Measure L funds would be used for the Kuali Project. However, he did not correct the error in the board agenda item.

Although Delta College has repaid the misspent funds and the Board of Trustees apparently did not authorize using Measure L funds for future expenses of the Kuali Projects, we nevertheless are concerned about the lack of control and oversight of bond expenditures. The prohibition of using bond proceeds for salaries and operating expenses is clearly stated in Proposition 39, Measure L, and the Education Code. Yet, for three

years, Delta College used bond proceeds for the Kualu Project without any questions or objections from the Citizens Oversight Committee or the outside auditors retained to conduct performance audits to determine whether bond proceeds were properly used. According to meeting minutes, Delta College's staff presented the Kualu project to the Citizens' Oversight Committee (COC); the COC posed no questions nor made any comment on the project. In addition, the outside auditor apparently reviewed the expenses associated with the Kualu Project and did not express any concerns relative to this issue. These matters are further discussed under Finding 3 and Finding 5 of this report.

When Delta College finally removed the expenses associated with the Kualu Project from the Measure L account three years later in July 2008, the removal was based on budgetary considerations rather than on recognition that such expenses were inappropriate under Measure L. According to Delta College's management, the expenditures were removed from Measure L funds to free up available resources, as the college was short on Measure L funds. Moreover, despite the removal, Delta College officials apparently were still under the belief that they could use Measure L bond proceeds for the Kualu Project as evidenced by the following statement of Delta College's Vice President of Business Services during the August 12, 2008 Board of Trustees meeting regarding the Kualu board agenda item:

There's no associated costs with this, but there is a typographical error I want to point out in the sense that **this project was originally intended to be funded through Measure L but as it turns out, we have identified a one-time savings in the general fund that can pay for this** [emphasis added]. There is no cost associated with this particular contract, but on the next item you are going to be considering, there is a cost. I want to clarify that no Measure L funds will be used for either contract with rSmart.

Based on the above statement, Delta College would have proceeded to use Measure L bond proceeds for the Kualu Project had there not been a one-time savings in the general fund to pay for the project.

FINDING 3—
Oversight by the Citizen Oversight Committee (COC) was passive, perfunctory, and ineffective.

Under Proposition 39 and the Education Code, the COC has broad authority to review bond expenditures to ensure that funds are properly spent as proposed on the ballot, and that no funds are spent on school district salaries or operating expenses. As evidenced by the issues identified in Finding 1 and Finding 2 of this report, the review effort of the COC clearly was ineffective. Based on the evidence we gathered during our review, we believe that the COC's ineffectiveness may be attributable to its lack of independence—the Board of Trustees adopts the COC's bylaws and appoints COC members. Specifically, in our audit we identified the following conditions:

- The Board of Trustees adopted COC bylaws that impaired the COC's ability to independently fulfill its responsibility by inappropriately limiting the nature and scope of its reviews and its authority to question the decisions made by Delta College officials. Examples include:

- The COC bylaws modified from mandatory to discretionary the COC's statutory responsibility to review bond expenditures. Education Code section 15278(b) stipulates that the committee **shall** actively review and report on the proper expenditure of taxpayers' money. Instead, Section 3.1 of the COC bylaws merely states that the committee **may** review quarterly expenditure reports produced by the district to ensure that funds were properly spent.
- The COC bylaws allow the Board of Trustees to dictate the COC's review activities over the use of bond funds. Section 3.5(b) states that "The establishment of priorities and order of construction for the bond projections shall be made by the Board in its sole discretion" because the "Board has not charged the Committee" with such responsibility. Thus, even though Measure L specifies that the COC is to "ensure funds are spent as promised and specified" and that "the district will work with the Citizens' Oversight Committee on prioritizing those projects in the event factors beyond the District's control require that project be reconsidered," the COC apparently was operating under the premise that the use of bond proceeds on sports facilities rather than on projects specifically listed in Measure L would be a matter beyond the COC's scope of responsibility.
- Section 3.5(d) of the COC bylaws specifically limits the COC's ability to explore less costly options for completing the proposed projects, again because "the Board has not charged" the COC with such responsibility. Thus, the action by Delta College in July 2008 to cancel a construction project after spending more than \$1.3 million in Measure L funds in architectural and engineering fees for the District Support Service Center is beyond the COC's scope of responsibility. It would seem that the COC should, at a minimum, review the College District's practices and procedures for project planning, managing, and oversight to prevent future occurrence of similar situations.
- The COC apparently did not seek information or data beyond that presented by Delta College's staff during its quarterly meetings. In reviewing the minutes of the COC's meetings, we found no evidence suggesting that the COC engaged in any other oversight activities beyond holding quarterly meetings to hear staff presentations. We also found that the information presented was general in nature and did not contain sufficient detail for the COC to conduct meaningful reviews of bond expenditures. For example, the expenditures related to the Kuali financial information system, including travel costs (see Finding 2), were reported as "Group II Equipment." The meeting minutes did not show any request for additional information or deliberation concerning the appropriateness of expenditures incurred by Delta College for this or any other expenditures.
- The COC's annual reports failed to meet the COC's own bylaws requirement. Section 3.3 of the COC bylaws states that the COC shall present an annual report which shall include (1) a statement indicating

whether the District is in compliance with the requirements of Article XIII A, section 1(b)(3) of the California Constitution, and (2) a summary of the Committee's proceeding and activities for the preceding year. Other than a statement about its quarterly meetings, the COC's annual reports for the last three years since its creation in May 2004 contain no other information. If the quarterly meetings constitute the entirety of COC activities, it is questionable whether the COC could make a conclusion as to whether the college was in compliance with the constitutional requirement. Rather than a report from an independent oversight agency, the COC's annual reports appear to be a document prepared by the Delta College's staff and its general contractor to provide enthusiastic endorsement of all the projects that were undertaken.

During an open meeting held between the SCO auditors and the COC committee members on September 18, 2008, a COC member stated that, because of their voluntary and unpaid status, members could not devote significant time and effort in this oversight endeavor. After the open meeting, we interviewed two of the four current COC committee members individually. The other two COC members did not respond to our repeated requests to meet. The two members that agreed to be interviewed stated that they had engaged in other discretionary oversight activities, but did not specify what those activities were. Based on our review of the COC meeting minutes, we could identify only one situation in which COC members made a site visit; that visit took place shortly after the committee was formed three years ago. Moreover, in reviewing the COC's annual reports for all three years of its existence, the COC included the data from Delta College's outside auditors as 'Audited Annual Financial Report' when such information was clearly marked as "unaudited," raising further questions about the depth and adequacy of the COC's oversight activities.

FINDING 4—
The Board of Trustees apparently exceeded its authority by amending the COC bylaws to extend the term limit of the COC members beyond the term prescribed in the Education Code.

Education Code section 15282 (a) stipulates that members of the COC shall serve for a term of two years without compensation and for "no more than two consecutive terms." Citing a possible lack of qualified applicants for committee membership, the Board of Trustees amended the COC bylaws to state:

"Notwithstanding the term limitation contained in this Section, if the District has not received a qualified application at the end of a member's second term, the Board may appoint such member to a third consecutive term of service which shall extend until the earlier to occur of : (a) such time as the District appoints a qualified applicant to replace such member; or (b) two (2) years from the date of appointment to such third term, and such member may serve such third consecutive term.

We are not aware of any statutory provision permitting the Board of Trustees to extend the term limit of the COC members beyond the term specified in the Education Code. Unless the Board of Trustee can provide the legal basis supporting its discretionary authority to extend the term limit of COC members beyond the Education Code requirement, all current COC members' terms are to expire by the end of October 2008.

According to a Delta College staff member, the college has recently received 16 applications for COC membership as of September 18, 2008, the date of the public meeting between the SCO auditors and the COC members.

FINDING 5—
The annual audit requirements for a performance audit and a financial audit did not result in meaningful enhancement of accountability and transparency of Measure L funds.

Under Proposition 39, Delta College is to annually arrange for an independent performance audit to ensure that bond funds have been expended only on the specific projects listed. It is also to arrange an independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects. Over the last three fiscal years since the passage of Measure L, Delta College has retained the services of the audit firm of Vavrinek, Trine, Day & Co., LLP (VTD) to address its audit needs. Our review of work performed by VTD, found that:

- The contracts between Delta College and VTD call for VTD to perform “agreed-upon procedures.” An agreed-upon procedure review does not constitute a “performance audit” under Generally Accepted Government Auditing Standards. Unlike a performance audit, which requires the auditor to apply appropriate procedures and assume responsibility for accomplishing the audit objectives, an agreed-upon procedures review limits the auditor to performing procedures that were specifically agreed-upon by the auditor and the auditor’s client. In accordance with professional standards, VTD specifically stated in its reports, “The sufficiency of the procedures is solely the responsibility of the specific users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.”

If VTD was to conduct a performance audit, it would be required to follow generally accepted government auditing standards. Instead, VTD performed “agreed-upon procedures” under attestation standards established by the American Institute of Certified Public Accounts. these standards are less comprehensive.

- The annual financial audit conducted by VTD apparently did not result in any additional audit procedures beyond what VTD was already required to perform to meet audit requirements under state and federal laws. Education Code section 84040(a) stipulates that the governing board of each community college district shall provide for an annual audit of all funds, books, and accounts of the district. Under the Federal Single Audit Act of 1996, government entities and educational institutions spending more than \$500,000 in federal funds are required to arrange for an entity-wide audit of their financial statements annually. VTD has been retained by Delta College to perform financial audits for years. Since Proposition 39 requires an “independent financial audit of the proceeds from the sale of bonds until all of those proceeds have been expended for the school facilities projects,” it would be reasonable to expect the auditors to perform additional audit procedures of bond proceeds. In the three years since Delta College started to incur expenses under Measure L, the contract

between Delta College and VTD for financial audits does not contain any provision that requires the auditors to perform additional audit procedures beyond those they previously performed. In the audited financial statements, the bond expenditures were reflected in the Statements of Revenues, Expenditures, and Changes in Fund Balance as supplemental information for the Capital Project Fund and marked “unaudited.” Nevertheless, the COC reported this information as “audited annual financial report” in its annual reports.

Despite the limited scope of the “agreed-upon procedures,” evidence suggests that the VTD still should have raised questions about Delta College’s use of Measure L funds, especially with respect to the prohibited expenditures for the Kuali Project reported under Finding 2 of this report. VTD auditors’ working papers clearly indicated that the auditors’ testing included samples of travel incurred by Delta College’s staff; travel expenses are operating expenses and are thus prohibited. The non-disclosure may have been the result of a liberal interpretation of what constitutes appropriate expenditures under Measure L.

RECOMMENDATIONS

The Delta College Board of Trustees should:

- Adopt policies and procedures to ensure bond proceeds are spent in accordance with the intent of voters as specified in the bond measures. The Board of Trustees should clearly document and make available to the public its rationale or basis for any significant deviation from the list approved by the voters.
- Review the Citizens’ Oversight Committee’s bylaws to ensure compliance with statutory requirements, and broaden the committee’s authority and responsibility.
- Take appropriate action to appoint qualified individuals to the Citizens’ Oversight Committee in a timely manner.

The Legislature should adopt legislation to improve accountability and transparency over the use of bond funds by:

- More clearly delineating the role and responsibility of the Citizens’ Oversight Committee and provide the committee greater independence from the colleges’ governing body.
- More clearly defining the purpose and objectives of the required annual financial and performance audit and specify that such audits shall be conducted in accordance with generally accepted government auditing standards.
- Imposing appropriate sanctions, such as preclusion from adopting future bond measures under provisions of Proposition 39, when colleges fail to adhere to prescribed constitutional and statutory requirements, or those specified in the bond measures.

**Attachment A—
San Joaquin Delta College’s
Response to Draft Audit Report**



San Joaquin Delta College

November 10, 2008

Jeffrey V. Brownfield
Chief, Division of Audits
California State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Via: email and US Mail

Subject: Response to Draft Audit Report for San Joaquin Delta College

Dear Mr. Brownfield

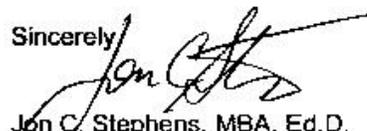
On August 29, 2008 I received a letter from you indicating that Senator Michael Machado had requested that your office "audit the oversight of Measure L bond proceeds." In response to that letter, San Joaquin Delta College met with you and your staff to discuss the scope of the audit and the agreed upon procedures your staff would follow to conduct the work. On September 5, 2008, we had our audit entry meeting and developed the agreed upon audit procedures and scope. (1)

After seven and a half weeks, the State Controller's Office finished the audit and prepared the audit report. On October 30, 2008, college staff met with the State Controller's Office staff to receive the preliminary report and conduct an audit exit meeting. At that time, the State Controller's Office notified Delta College that it could prepare a report to express opinions and introduce new information about the audit report. And this report would be included in the State Controller's Office report for dissemination.

Enclosed you will find the response of San Joaquin Delta College to the Draft Audit Report of the California Controller's Office. In this response, Delta College has noted agreement with some findings and disagreement with others. It also provides a description and rationale for the decisions to agree or disagree.

If you have any questions or comments, please call me: 209.954.5022.

Sincerely,



Jon C. Stephens, MBA, Ed.D.
Vice President of Business Services

Office of Vice President of Business Services

5151 Pacific Avenue - Stockton - California 95207 • Office: (209) 954-5022 • Fax: (209) 954-5891

Response by San Joaquin Delta College To the California State Controller's Office Audit

1. *A significant portion of the expenditures incurred by Delta College were spent on state-of-the-art athletic facilities and computer signs:*

The San Joaquin Delta Community College District disagrees with this finding. The expenditures referenced were prudent and appropriate uses of Measure L funds and were appropriately disclosed to the voters prior to the election of March 2, 2004. And the fraction of the total bond program committed to Physical Education facilities noted by the State Controller's Office was relative small. (3.8%)

2

Delta College is committed to its students and the communities it serves. The Physical Education facilities are a key component of not only the curriculum of the college but also the recreation needs of the community. And it is the College's intent to provide safe, attractive and durable facilities to serve both of these needs.

During the master planning phase, Delta College evaluated the physical needs of the campus and determined that the Physical Education facilities needed improvement, replacement and upgrade for several reasons: Safety, Gender Equality, Community Use, Budgetary Savings and Accessibility for Disabled Persons.

There were significant safety concerns that the Measure L bond funding remedied. The sports fields of the college, many of which were originally constructed in 1975, were uneven, potholed, and did not drain properly. This caused accumulation of water. Left unattended, the pooling water would foster growth of insects, including West Nile virus-carrying mosquitoes. Also, the pooling water caused field conditions that were unsafe for athletes and recreational users.

The addition of fences, hand railings and walls provided for better spectator control and safety. The Physical Education projects also included security cameras which deter vandalism and other crime and inappropriate use of the facilities. In addition, by using "state-of-the-art" synthetic turf, the college contributed to the clarity of local water tables by reducing the fertilizer on the grass and associated runoff into the aquifers.

Title IX of the Education Amendments of 1972, 20 U.S.C. Sect. 1681 (20 United States Code section 1681) et seq. requires:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

In compliance with this law, and adhering to its own goals of equality, the Board of Trustees determined that women's sports facilities needed enhancement to provide equal opportunity in organized sports. The Measure L projects mentioned in the State Controller's Office Audit Report provided for this new, safe and durable Physical Education facility that facilitates compliance with legal mandates for equal opportunities for both genders.

The Civic Center Act (Education Code Section 82537) requires that public community college facilities be made available for public use when not needed for instructional purposes. Therefore, the Physical Education facilities funded through Measure L must be made available to groups that need a venue to practice and play their sports. This law was another consideration that Delta College evaluated in the decision to build durable, attractive, safe facilities. It is expected that other groups will use the fields and will place an additional burden on the athletic surfaces. The "state-of-the-art" building materials accommodate volume usage that exceeds the capabilities of traditional track and field surfaces.

The free upgrade of athletic track facilities was an added benefit provided by the track manufacturer. Provided at no additional cost to the college, the "state-of-the-art" track provides excellent facilities while costing no more to Delta College and saving funds generated through Measure L. One goal of the Measure L Bond Team has been to leverage the tax dollars to provide more and better facilities through partnerships such as this free upgrade from a traditional track to a "state-of-the-art" track. In addition, the synthetic track and fields reduce the cost of maintenance, as grass is not mowed and the track is not continuously leveled due to previous athletic activity. And the cost of the physical education facilities only represented 3.8% of the total bond program.

The previous Physical Education facilities were not compliant with the American with Disabilities Act (ADA). Under this federal law, Delta College is required to provide access for all people to its athletic venues. During planning, it was determined that not all wheelchair-using students and campus visitors could access the sporting venues. As a result of the Measure L funded projects, all disabled persons can now access the sports venues of the college. This improvement brings Delta College in compliance with federal law and Delta College's own policy of equality of access to its facilities.

The report also cites the expenditure of bond funds for electronic messaging boards funded with Measure L proceeds. These marquees are common on college campuses and are an integral part of the communication, public information and emergency preparedness of the college. The signs notify the campus constituencies as well as the public about the events on campus. In addition, they serve as an emergency alert system. They are used to direct traffic in the event of a campus or civic emergency and can be integrated with the Amber Alert System. An example of this use is a City of Stockton program conducted during the holiday season last year. The program reduced crime in and around the malls adjacent to the College. Safety tips and traffic information were broadcast on a radio frequency that was advertised on the marquees.

Prior to installing the improved electronic signboards, college maintenance workers were required to manually change the messages on each sign by climbing twenty foot ladders adjacent to fast moving traffic and painstakingly replacing magnetized letters by hand one at a time. Safety concerns dictated that two employees be dispatched each time the signs were to be changed. Continuing this practice was unsafe, tedious, and extremely inefficient and a costly use of maintenance staff time. The new signs operate from a central computer terminal, free maintenance workers to perform other needed work, reduce safety-related liability, and display multiple messages simultaneously.

In addition, the manual signs were small and difficult to read. Both signs are located adjacent to busy traffic thoroughfares. Passersby could not easily read the text, which created a hazard if drivers slowed to read the messages. The larger, easy-to-read, illuminated text allows for conveyance of messages quickly in an attractive manner. The marquees also allow for

presentation of messages at night, when the previous signs were much harder to read despite spot-light illumination.

The signs also provide an opportunity to generate revenue. While the college has not yet taken advantage of the revenue capabilities of the signs, the Public Information Office receives weekly requests to purchase advertising space on the signs. It is expected that once the college develops policies regarding public use of the signs, advertising revenue will pay a large portion of the initial cost of the marquees.

One of the key elements associated with the Measure L campaign was the goal of "wiring classrooms and buildings for computer technology." The cost of the signs included installation of vital infrastructure needed to expand the communication and data capabilities on campus. While needed for the sign data, the underground conduits also carry expanded data and signaling to other parts of the campus. Whether the signs were installed or not, the college needed this vital underground service. The signs simply presented a more cost effective way to combine projects and save the taxpayers' money.

2. Delta College inappropriately used Measure L bond proceeds to pay for operating expenses, which is specifically prohibited in Measure L as well as in Proposition 39..

Delta College disagrees with this finding. The State Controller's Office has cited the development of software (Kuali) as an operating expense. Under governmental and state accounting directives, this internally developed software is eligible for bond funding but the college chose to fund it through other means. This State Controller's Office comment contradicts itself in the sense that the State Controller's Office acknowledges that the expenses for Kuali are not charged to Measure L and then recommends that Kuali not be charged to measure L. (3)

Because Kuali is not charged to Measure L it should not be referenced in the report as a Measure L expense. The State Controller's Office made an error. In addition, the State Controller's Office has incorrectly interpreted accounting standards and misapplied them to the development of software. If Kuali had been charged to the Measure L funds, it would have been a legitimate expenditure as a capital asset and not an operating expense.

The State Controller's Office audit did not consider the two regulatory resources by which the college is governed and which the college uses to classify its transactions: The California Community College Budget and Accounting Manual and the Governmental Accounting Standards Board.

If Measure L funds were used to purchase financial control software to manage funds, there would be no question that this capital expense would be allowable under Proposition 39 and the Measure L ballot language. The only difference between Kuali and an "off-the-shelf" software package is that a consortium of public and private colleges and universities are developing Kuali. Rather than purchasing the financial control software from a third party vendor the college works with this association and is saving taxpayers a considerable amount of money. And the result is far superior software. (4)

Since Kuali is developed by governmental agencies, Delta College has applied Governmental Accounting Standards Board (GASB) Statement 51 which requires capitalization of government-

developed software. While this GASB Statement is not yet mandatory (it requires capitalization of software like Kualii for periods beginning after June 15, 2009) Delta College is progressive and intends to comply with all accounting regulations from GASB.

As noted in the Audit Report, the State Controller's Office acknowledges that the Kualii expenses were, in fact, not charged to Measure L. Kualii expenses are charged to general capital outlay. Delta College does not understand why the State Controller's Office chose to repeat their error in this printed report after notification to the auditors of their errors.

5

If, however, Kualii were charged to Measure L, it would have been correctly categorized as a capital asset and not an operational expense, per GASB Statement 51. If Kualii had been charged to Measure L, it would have been an appropriate expenditure for a Proposition 39 bond such as Measure L.

6

According to GASB Statement 51, all costs of the development of software, by a governmental agency can be capitalized if it meets three criteria (listed below). GASB states:

"Governments possess many different types of assets that may be considered intangible assets, including easements, water rights, timber rights, patents, trademarks, and computer software."¹

As software developed by governmental agencies, the Kualii project is an intangible asset. The proper classification of this intangible asset can also be found in GASB 51.

"This Statement requires that all intangible assets not specifically excluded by its scope provisions be classified as capital assets."²

Delta College has satisfied the requirements to qualify Kualii as an asset under GASB 51:

- "It lacks physical substance -- in other words, you cannot touch it, except in cases where the intangible is carried on a tangible item (for example, software on a DVD).
- It is nonfinancial in nature - that is it has value, but is not in a monetary form like cash or securities, nor is it a claim or right to assets in a monetary form like receivables, nor a prepayment for goods and services.
- Its initial useful life extends beyond a single reporting period"³

Under these GASB 51 criteria, Kualii is clearly an intangible, internally developed asset and must be categorized as a capital expenditure. Therefore, it is not an operational expense and it is allowable under Measure L and permitted in a Proposition 39 bond.

In addition, Delta College is required to follow the accounting and budgeting procedures according to the Chancellor's Office of the California Community College, Budget and Accounting Manual (BAM). Appendix E of the BAM provides the definitive test to determine

¹ <http://www.gasb.org/> Accessed November 7, 2008.

² <http://www.gasb.org/> Accessed November 7, 2008.

³ <http://www.gasb.org/> Accessed November 7, 2008.

whether an expenditure of a college is a supply (operating expense) or a fixed capital asset. Under Proposition 39 and Measure L, operating expenses cannot be charged to bond funds, whereas capital outlay can be charged to bond funds.

Appendix E of BAM presents a test of expenditures to determine whether they are supplies or capital expenses.

"To obtain uniformity, the district should assign items to the various classifications on the basis of the answers to the questions in the list below:

1. Does the item lose its original shape and appearance with use?
 2. Is it consumable, with a normal service life of less than one year?
- Appendix E Budget and Accounting Manual E.2
3. Is it easily broken, damaged or lost in normal use?
 4. Is it usually more feasible to replace it with an entirely new unit than to repair it?
 5. Is it an inexpensive item? Does the small unit cost make it inadvisable to inventory the item? See Education Code Section 81600.

"If the answer to one of the above five questions is yes, the item should be classified as a supply item and the expenditure should be recorded within object classification 4000. If all answers are no, the item should be classified under object classification 6400, Equipment."⁴

For the Kualii project, the answer to each of these tests is "no." Therefore, under the BAM, the development of Kualii is a capital expense and would be eligible for Measure L funding. Further, it must be classified as a 6400 object which falls into Group II funding, according to the Chancellor's Office BAM.

The college disagrees with this finding because the State Controller's Office did not apply the two relevant codes of regulation to the Kualii project: GASB and BAM. Had the State Controller's Office staff reviewed the guidelines by which the college accounting is governed, they would have learned that Kualii is a capital expense and is, therefore, qualified as a Measure L expense. Nevertheless, the Kualii expenses will remain outside of Measure L funding at the option and direction of the Board of Trustees.

3. Oversight by the Citizen Oversight Committee (COC) was passive, perfunctory, and ineffective.

Delta College made every effort to recruit qualified citizens to serve on its Oversight Committee in compliance with the law. These members worked diligently at a professional level that protected the interests of the taxpayers and more than satisfied the requirements of Proposition 39.

The Citizens Oversight Committee is required with bond initiatives passed under Proposition 39. Shortly after the passage of Measure L, the Delta College Board of Trustees appointed the Citizens' Oversight Committee (COC). The residents serving on the COC are not employees of Delta College and serve without remuneration of any kind. Delta College is grateful for the

⁴ Reference: Chancellor's Office Budget and Accounting Manual, 2000.

generous devotion of time, expertise and knowledge the COC brings to the accountability and transparency of the college with respect to Measure L.

The COC members have daily careers that do not permit exhaustive hours of research on campus. They review and examine all of the expenditure reports prepared on their behalf, they publicize the expenditures, they evaluate the appropriateness of the expenditures, and they submit an annual report attesting to the veracity of the Measure L expenditure reports. Each member of the COC has performed these duties faithfully on his or her own time, without compensation.

The State Controller's Office indicates that the COC is "passive, perfunctory and ineffective," a finding with which Delta College strongly disagrees. Each of the COC members has served selflessly and has undertaken a large responsibility, which each member has served faithfully. Members toured sites, reviewed financial reports, were provided all of the information requested and publicized the results of their reviews. The State Controller's Office Audit Report further confirms that the members interviewed "had engaged in other discretionary oversight activities." This indicates that the COC not only performed its legally required responsibility but the members also initiated their own discretionary investigations into the integrity of the Measure L funding. In this regard, Delta College views the COC as a vital, active component of its oversight of the bond funds and appreciates the many sacrifices and the tireless donation of the members' time.

8

4. *The Board of Trustees apparently exceeded its authority by amending the COC bylaws to extend the term limit of the COC members beyond the term prescribed in the Education Code.*

Delta College agrees that it did seek to retain some COC members beyond the term prescribed by law due to an oversight.

Under Proposition 39, the Board of Trustees is required to establish a COC to provide oversight for the Measure L bond funds. It did appoint this committee soon after the Measure L election. Because the duties of the COC require long hours of detailed analysis of financial reports, and because the COC members receive no compensation for their roles, it is difficult to recruit and retain a full complement of unpaid volunteer COC members. As a result, there have been times when the COC had decreased membership.

In fact there have been times when the membership of the COC dropped to such a low level that it was difficult to maintain a quorum. Without a quorum the COC could not perform its basic functions. Allowing for additional consecutive terms seemed to be the only method by which the COC could conduct its business. The change in policy to allow for additional terms of service on the COC was an attempt to retain these qualified individuals on the committee until new members could be identified.

In addition, there is a legal requirement that one of the members of the COC be a member of a "bona fide taxpayers group." With only one such member on the COC, the college attempted to retain this member by extending the length of service. The decision was made to balance the need to have a member of a bona fide taxpayers association with the difficulties of attracting a member of the taxpayers association to this unpaid post.

Delta College recognizes that, despite the best intentions to retain membership, the change in policy was inconsistent with the Proposition 39 legislation. It has taken steps to restore the terms to their previous statutory limits.

5. *The annual audit requirements for a performance audit and a financial audit did not result in meaningful enhancement of accountability and transparency of Measure L funds.*

Delta College asserts that it has more than sufficiently met the requirement and objective of the performance audit required under Proposition 39 and related laws. Delta College has ensured that not only an annual financial audit has been conducted on Measure L Funds, but has also complied with the additional performance audit requirement to ensure bond funds are expended only on projects listed in the ballot language. The results of these performance audits are issued directly to the Citizens' Oversight Committee that is charged with ensuring funds are expended in accordance with the proposed ballot language.

9

The objective of the performance audit has been achieved by the four agreed upon procedures applied to Measure L proceeds in each year funds have been expended. This performance audit is in addition to the annual financial audit. The procedures include:

- Verify that District procedures for disbursement of funds related to the voter approved general obligation bonds were applied in accordance with applicable laws and regulations, as well as policies approved by the San Joaquin Delta Community College District Board of Trustees. This will be accomplished through the inspection of specified documents evidencing certain types of transactions and detailed attributes thereof, including, but not limited to, the specific documents related to bid procedures for contracts and services, invoices for services rendered, and other appropriate documents deemed necessary to provide a basis for the results of our review.
- Verify compliance with expenditure allowances related to local bond funding in accordance with approved contracts and planning documents and Bond Initiative documents placed on the Local Election Ballot.
- Verify that the local bond proceeds and expenditure of funds are accounted for separately as required.
- Select and test at least 25 percent of total dollar expenditures for the year ended June 30, 2007. Obtain supporting documentation (invoices, purchase orders, receiving documentation, contracts, etc.) and verify that the funds expended complied with the purpose that was specified to the registered voters of the District. Election materials, District resolutions, master plan, and other documents available at the District will be used to determine the purpose of expenditures.

Under these procedures a huge number of Measure L transactions have been tested to ensure they comply with all the relevant rules and law. In fact, more than half of the expenditures for

Measure L have been examined individually for each year since the bond measure passed. The agreed upon procedure only requires 25% of expenditures to be tested. Delta College's Independent Auditors noted no errors or exceptions in the past three years while applying these procedures and testing more than 50% of all transactions.

10

Measure L Funds are included within the District's existing Capital Projects Fund and reported within the District's overall audited annual financial statements. Proposition 39 does not require separate presentation of bond funds in a stand-alone financial statement. However, for increased transparency and accountability to the readers of the college's audited financial statements, Delta College has included a supplementary schedule detailing the various fund sources that are comprised in the audited Capital Projects Fund. It is typical for these supplementary schedules to be labeled "unaudited", since they are for information purposes only and are not required under Governmental Accounting Standards. However the "unaudited" reports derive from audited information. The only difference is that the added report was not audited in its final format. But all of the data presented on the report has been audited several times. In fact, with the numerous reviews by various authorities not one adjustment or error has been noted. This includes the State Controller's Office own audit which found no errors in any of the data presented.

The Measure L bond funds are reviewed by more authorities and are under more scrutiny than any other funds the college maintains. The bond funds have been reviewed by: the Internal Control of Delta College, an External CPA Auditor under the Single Audit Act, the Grand Jury of the County of San Joaquin, a separate Performance Audit conducted by a CPA, the Delta College Bond Team and now the State Controller's Office. Not one discrepancy, adjustment or error was noted by any of these reviewing authorities.

11

The review of the Measure L funds by so many different authorities has resulted in added transparency and accountability. Delta College has complete faith in its accounting systems, internal control and its financial management because, despite the scrutiny of all of these oversight entities, not one error was found over the life of the bonds. Delta College welcomes this validation of its accounting procedures.

Recommendations:

- 1. Adopt policies and procedures to ensure bond proceeds are spent in accordance with the intent of voters as specified in the bond measures. The Board of Trustees should clearly document and make available to the public its rationale or basis for any significant deviation from the list approved by the voters.**

The college conducts a series of audits including: Internal Control measures, the Citizens' Oversight Committee, an Independent Financial Audit under the Single Audit Act, and a Performance (Agreed Upon) Audit. The college feels it is unnecessary to adopt any new audit procedures. However, the college will publicize the rationale or basis upon which it significantly changes the bond funding priorities from this point forward.

12

- 2. Review the Citizens' Oversight Committee bylaws to ensure compliance with statutory requirements, and broaden the committee's authority and responsibility.**

The college administration will recommend a change to the Citizens' Oversight Committee bylaws to ensure the terms of the members are consistent with the legal requirements.

13

- 3. Take appropriate action to appoint qualified individuals to the Citizens' Oversight Committee in a timely manner.**

The college is in the process of recruiting more and new Citizens' Oversight Committee Members.

Attachment B— SCO Auditors’ Comments on San Joaquin Delta College’s Response

We are providing the following comments to San Joaquin Delta College’s (Delta College) response. The comments below correspond to the numbers we placed in the margins of Delta’s response.

1. Delta College mischaracterized our audit as “agreed upon audit procedures and scope.” The performance of agreed-upon procedures, such as those performed by the external auditors retained by Delta College, enables the college to dictate the scope and procedures to be performed through a contract. Delta College has no authority to dictate the scope of our audit. This audit was performed under the State Controller’s constitutional and statutory audit authority. In addition, this audit was performed in accordance with Generally Accepted Government Auditing Standards’ (GAGAS) for a “performance audit.” Under GAGAS, there is a clear distinction between an audit and an attestation engagement, which includes agreed-upon procedures.
2. The 3.8% figure, apparently calculated based on expenditures incurred as of June 30, 2008, is inaccurate and distorts the significance of the issue raised in this finding. As stated in our report, the estimated total cost of the athletic facilities is more than \$14 million, which represents at least 5.6% of the \$250 million in bond proceeds. A more meaningful comparison is that of total expenditures (more than \$14 million) against the amount budgeted (less than \$2 million) in the Delta College’s Facilities Master Plan (Master Plan) for athletic facilities. Without deliberation or explanation, Delta College exceeded the budgeted amount—which reflected the priority adopted by the voters—by more than 700%. Available documentation clearly shows that the additional costs were primarily for enhancement to “state-of-the-art” facilities rather than for addressing safety or legal concerns. For example, the costs for enhancement to the track field were to provide the college with a “potential opportunity to host Olympic trials” before the “free upgrade” by the manufacturer.

Moreover, based on its actions with respect to the athletic facilities and electronic messaging boards (marquees) and its response to our draft report, Delta College clearly believes that it can disregard the priorities of voters as reflected in Measure L and the Master Plan.

As stated in our report, Delta College incurred \$72 million in expenditures as of June 30, 2008. Of this amount, \$11.5 million (16%) was spent on athletic facilities and marquees. If this spending pattern were to continue, Delta College would incur \$40 million (\$250 million at 16%) in expenditures that are inconsistent with the priorities established by the voters.

3. Our report contains no contradiction. We stated in our report that Delta College inappropriately used Measure L funds to pay for Quali expenses for three years. Although the expenses have been repaid from Measure L expenditures to general fund expenditures, we are still concerned about the lack of control and oversight by Delta College and the Citizens’ Oversight Committee (COC). In addition, we are concerned that the external auditors who performed the agreed-upon procedure engagements did not properly ensure that the Measure L funds were spent in accordance with the ballot measure. We recommended that the Delta College Board of Trustees adopts policies and procedures to ensure that bond proceeds are spent in accordance with the intent of the voters.
4. This statement is incorrect. We would still question the purchase of financial-control software if Measure L funds were used. Measure L funds should not be used for an administrative function/activity. Moreover, purchase of financial-control software is not included in Measure L, which states “By law, all funds can only be spent on the described projects.”

5. Delta College misunderstands this finding, which was revised as a result of additional information provided by the college after our audit exit conference. As stated in the revised finding, although the misspent Measure L funds have been repaid, it took over three years for Delta College to rectify this matter. Therefore, we have established that there is a lack of control and oversight by the Delta College, the COC and the auditors.
6. Delta College is attempting to justify unallowable expenditures based upon if an expenditure can be capitalized. Whether expenditures can be capitalized is but one of the criteria in determining whether it is allowable under Measure L. For example, the purchase of laptop computers could be capitalized; but, it is still unallowable because it is an operating expense. Travel expenses are clearly operating expenses and thus are specifically prohibited under Measure L.
7. Delta College disputes our conclusion that the COC was passive, perfunctory, and ineffective but does not provide factual evidence to show that the COC engaged in any meaningful oversight activities. As noted in our report, the COC activities to date consisted of one site visit shortly after the committee was formed three years ago, and quarterly meetings. Furthermore, we found that:
 - a. The COC did not raise any questions or objections during any of the quarterly meetings.
 - b. The COC passively allowed the Board of Trustee to adopt bylaws to limit the scope of the COC's reviews and its oversight authority, despite Education Code section 15278, which provides it broad discretion and authority to provide oversight of bond expenditures.
8. Delta College has taken our statement out of context. We noted in our report that the COC members who agreed to be interviewed "stated that they had engaged in other discretionary oversight activities, **but did not specify what those activities were** [emphasis added]." We further noted that, based on our review of meeting minutes, we could identify only one situation in which the committee members made a site visit; the visit occurred more than three years ago. In our opinion, this one visit does not constitute sufficient oversight. Had the COC actually reviewed the district's financial statement, presumably it would not have included unaudited data as audited data in its annual reports.
9. Under GAGAS, a clear distinction exists between a "performance audit" and an attestation engagement which includes the performance of "agreed-upon procedures." As stated in the external auditors' report, the auditors performed "agreed-upon procedures" as dictated by the contract between Delta College and its auditors. Yet, Delta College continues to mischaracterize it as a performance audit.
10. Even if the auditors would have reviewed 100% of the expenditures, the review is meaningless if they applied inappropriate or liberal criteria in determining what constitutes allowable expenditures.
11. Delta College's response is misleading. The impression portrayed is that there are multiple entities involved in examining the bond funds and found no exception. The financial audit, the audit under the Single Audit Act, and the "performance audit" were all performed by the same firm retained by the college. The *Delta College Bond Team* is a committee created by Delta College and thus is not an independent entity. Our audit found numerous problems as noted in this report.
12. This response did not address our recommendation. We recommended that Delta College "adopt policies and procedures" to ensure bond proceeds are spent in accordance with the intent of voters as specified in the bond measures. We did not recommend additional audits because, as noted in our report, the audits by auditors hired by the college did not result in meaningful enhancement of accountability and transparency in Measure L fund. We do not believe additional audits are useful under the same environment.

13. This response did not fully address our recommendation. This response addressed Finding 4 of our report, which stated that the Board of Trustees inappropriately extended the term limit of two COC members beyond the term prescribed in the Education Code. This response did not address Finding 3 of our report, which found that the Board of Trustees does not have the authority to usurp the Education Code by adopting bylaws to limit the authority of the COC and the scope of its review. Under Education Code section 15278, the COC has broad authority to provide oversight over bond spending. We recommended that the Board of Trustees amend the bylaws to provide the COC with authority consistent with the Education Code. The college did not address this recommendation.

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